

IRW

Docket No.: NOOT 8500U1
Date: January 19, 2006

In re application of: Joseph E. Schroeder	
Serial No.: 10/677,443	Group No.: 3749
Filed: 10/02/2003	Examiner: Gregory A. Wilson
For: ONCE-THROUGH EVAPORATOR FOR A STEAM GENERATOR	

Mail Stop PETITIONS
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Transmitted herewith is:

☒ A REQUEST FOR RECONSIDERATION OF PETITION TO WITHDRAW HOLDING OF ABANDONMENT in the above-designated application in response to the Decision on Petition mailed *January 9, 2006*;

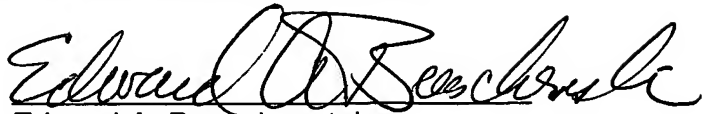
☒ A Supplemental Declaration of Edward A. Boeschenstein with the following enclosures:

1. A true copy (reduced in size) of the cover for the file jacket for the above-designated application;
2. A report for the above-designated application generated by law firm's commercial patent program data base; and
3. A copy of the Supplemental Information Disclosure Statement for the above-designated application that was sent to the Patent Office on June 14, 2005.

☐ An additional fee is required.

The Commissioner is hereby authorized to charge any additional fees or credit overpayment under 37 CFR 1.16 and 1.17 which may be required by this paper to

Deposit Account 162201. *Duplicate copies of this sheet are enclosed.*

A handwritten signature in black ink, appearing to read "Edward A. Boeschenstein". The signature is fluid and cursive, with a large initial "E" and "B".

Edward A. Boeschenstein

Registration No: 22,986

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop PETITIONS, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on January 19, 2006.

A handwritten signature in black ink, appearing to read "Edward A. Boeschenstein". The signature is fluid and cursive, with a large initial "E" and "B".

Edward A. Boeschenstein, Reg. No. 22,986



Appl. No.	:	10/677,443
Applicant	:	Joseph E. Schroeder
Filed	:	10/02/2003
Title	:	ONCE-THROUGH EVAPORATOR FOR A STEAM GENERATOR
TC/A.U.	:	3749
Examiner	:	Gregory A. Wilson
Conf. No.	:	9001
Docket No.	:	NOOT 8500U1

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Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PETITION TO
WITHDRAW HOLDING OF ABANDONMENT**

This paper responds to a Decision on Petition mailed from the Patent Office on January 9, 2006, in connection with the above-designated patent application. The decision dismissed the applicant's petition to withdraw a holding of abandonment, but contained an offer to reconsider that decision upon a request filed within two months. This Request for Reconsideration serves that purpose.

By way of background, the Patent Office rendered its initial action in the above-designated application on March 29, 2004. Applicant did not become aware of the action until September 30, 2004, when the examiner to whom the application is assigned called, inquiring if applicant intended to abandon the application. Applicant immediately filed its Petition to Withdraw Holding of Abandonment.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Mailstop PETITIONS, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on January 19, 2006.

Edward A. Boeschstein, Reg. No. 22,986

1-19-06

Date of Signature

Appl. No. 10/677,443
Request for Reconsideration of Petition to Withdraw Holding of
Abandonment/January 19, 2006

In preparing the petition the undersigned attorney followed the guidelines set forth in MPEP 711.03(c) (1) (A) which is entitled "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action". Those guidelines require:

1. A statement from the practitioner confirming that the official action was not received.
2. A statement from the practitioner attesting that a search of the file jacket indicates that the official action was not received.
3. A statement from the practitioner that the docket records indicate that the official action was not received.
4. A copy of the docket record for the due date where to the official action would have been entered, had the official action been received.

The Declaration of Edward A. Boeschstein that accompanied the petition met the foregoing requirements.

The petitions examiner, however, contends that a petition to withdraw a holding of abandonment must also contain a copy of the file jacket showing entry of all actions from the Patent Office. Applicant cannot find within MPEP 711.03(c) (1) (A) or the notice that appeared at 1156 OG 53 any requirement for submission of file jacket entries, although the latter does refer to the file jacket as one form of evidence suitable under an old and burdensome procedure that is no longer in effect.

Appl. No. 10/677,443
Request for Reconsideration of Petition to Withdraw Holding of
Abandonment/January 19, 2006

Be that as it may, applicant submits herewith the Supplemental Declaration of Edward A. Boeschenstein. That declaration introduces a copy (reduced in size) of the file jacket for the application as it appeared during the spring, summer, and fall of 2004.

Also, using a commercial computer program, the law office records events in patent applications, including receipt of official actions, all as explained in the Supplemental Declaration. The computer report for the application bears no reference to the official action of March 29, 2004, further indicating that it was never received.

Further evidence that the law firm did not receive the official action of March 29, 2004 resides in the fact that the undersigned attorney on June 17, 2004, submitted a Supplemental Information Disclosure Statement with a representation that no fee was due because the document was submitted "before the first action on the merits". The undersigned attorney could not have ethically made that representation had he been aware of the official action of March 29, 2004.

In view of the foregoing favorable consideration of the "Request for Reconsideration of Petition to Withdraw Holding of Abandonment" and dispatch of the

Appl. No. 10/677,443
Request for Reconsideration of Petition to Withdraw Holding of
Abandonment/January 19, 2006

office action are respectfully requested.

Respectfully submitted,

A handwritten signature in cursive script, reading "Edward A. Boeschenstein". The signature is written in black ink and is positioned below the "Respectfully submitted," text.

Edward A. Boeschenstein
Reg. No. 22,986
Polster, Lieder, Woodruff & Lucchesi, L.C.
12412 Powerscourt Drive, Suite 200
St. Louis, Missouri 63131
Phone (314) 238-2400
Fax (314) 238-2401



Appl. No.	:	10/677,443
Applicant	:	Joseph E. Schroeder
Filed	:	10/02/2003
Title	:	ONCE-THROUGH EVAPORATOR FOR A STEAM GENERATOR
TC/A.U.	:	3749
Examiner	:	Gregory A. Wilson
Conf. No.	:	9001
Docket No.	:	NOOT 8500U1

SUPPLEMENTAL DECLARATION OF EDWARD A. BOESCHENSTEIN

Edward A. Boeschenstein declares as follows:

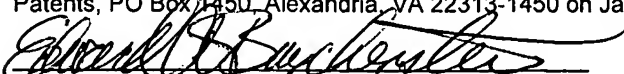
1. I am an attorney registered to practice before the United States Patent and Trademark Office in connection with the prosecution of patent applications. I practice law with the law firm of Polster, Lieder, Woodruff & Lucchesi in St. Louis, Missouri, having been a partner in that firm at all times relevant to the matters discussed in this declaration.

2. On October 4, 2002, I filed on behalf of Joseph E. Schroeder and his employer, Nooter/Eriksen, Inc., U.S. provisional patent application 60/416,083 for a "Once-Through Evaporator with Twisted Tape Inserts". Later I prepared and filed the above-designated nonprovisional application which derives priority from the provisional application, having sent that nonprovisional application to the U.S. Patent Office by Express Mail on October 2, 2003.

3. On October 3, 2004, after having been informed that the application had lapsed into abandonment for lack of a response to an official action mailed on March 29, 2004, I filed a Petition to Withdraw Holding of Abandonment. The

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Edward A. Boeschenstein, Reg. No. 22,986

petition, while it referred to the file jacket for the application, did not include a copy of the jacket cover where official actions and responses are recorded.

4. A true copy, although reduced in size, of the cover for the file jacket of the above-designated application as it existed during the spring, summer, and fall 2004 is attached.

5. When the law firm receives an official action from the Patent Office, that official action is directed immediately to a paralegal having responsibility for patent applications. The paralegal enters information concerning the official action into a computer data base controlled in part by a commercial patent program. A report generated by that program for the above-designated application is attached. The "List of Actions" section of the report contains no reference to the official action of March 29, 2004, indicating that the official action was never received. The paralegal, upon receiving an official action, also enters the action in a docketing system, and that system produced the report that was attached to the Declaration filed with the original Petition. Finally, the paralegal retrieves the file for the application to which the official action pertains and enters the official action on the cover of the file jacket under "P.O. Actions". Only then is the file together with the official action delivered to the attorney responsible for the application.

6. On June 17, 2004, after having received an International Search Report for a PCT application corresponding to the above-designated application, I sent to the Patent Office a Supplemental Information Disclosure Statement citing the references identified in the International Search Report. The

Supplemental Information Disclosure Statement states: "the U.S. Patent Office (ISA/US) dispatched the search report..."before the first action on the merits. Therefore, no fee is due". I would not have released the Supplemental Information Disclosure Statement with that representation had I been aware of the official action of March 29, 2004. A copy of the Supplemental Information Disclosure Statement is attached.

7. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true. These statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.


Edward A. Boeschstein

Date: January 19, 2006
St. Louis, Missouri

U.S. Ser. No. 10/677,443 Docket No. N00T 8500 U1 Group.....

Foreign Ser. No. Filed OCTOBER 2, 2003 Examiner

Name JOSEPH E SCHROEDER

Invention ONCE-THROUGH EVAPORATOR FOR A STEAM GENERATOR

Residence

P.O. Address

Received Client or Associate Identification

Small Entity
Declaration required? ☒ No ☐ Yes

Application Docu/Disk

Filed with PTO:

P.O. Actions

Amendments

Mailed

Due

Extended To

Mailed

Card Received

Docu/Disk

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Charged to N00T 8500 U1

Assigned to Nooter/Eriksen, Inc.

Recorded 10-2-03

Reel 14568 Frame 720-722

Drawing Corrections
Required? ☐ Yes ☐ No Ordered.....

Allowed

Final Fee Paid

Patented

Patent No.

Other Applications 60/416,083 (10-4-02)

WO

- | | |
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| 1. | |
| 2. | |
| 3. | |

Attorney: EAB

Docket No. N00T 8500 U1

Country US - UTILITY

Name SCHROEDER

Country Application

Thursday, January 19, 2006

Case Number: 08500 **Country:** US **SubCase:** U1
Docket Number: 8500
Client: NOOTER CORPORATION United States of America
Application Title: ONCE-THROUGH EVAPORATOR WITH TWISTED TAPE INSERTS
Case Type: ORD **Application Status:** Abandoned
Application Number: 10/677443 **Filing Date:** 02-Oct-2003
Publication Number: 04-0069244 **Publication Date:** 15-Apr-2004
Patent Number: **Issue Date:**
Parent/PCT Number: 60/416083 **Parent/PCT Date :** 04-Oct-2002
Parent Issue Number: **Parent Issue Date :**
Agent: **Expiration Date:**
PTA: 0
Agent Reference No.: **Tax Schedule:** LE
Confirmation #:

Remarks: 1/12/06 - Decision on Petition rcvd - DISMISSED

05 Oct 2004 - Petition to Withdrawal Abandonment faxed to USPTO

21 June 2004 - IDS rcvd in PTO per post card receipt

List Of Actions

Action(s) Due	Due Date		Action Taken
Postcard Follow-Up	02-Dec-2003	Due Date	17-Oct-2003
Filing Receipt Follow-Up	02-Jan-2004	Due Date	12-Jan-2004
Information Disclosure Stmt	02-Jan-2004	Due Date	02-Oct-2003
Application Status Check	02-Apr-2005	Due Date	12-Apr-2005
Application Sta Follow Up Date	12-Oct-2005	Due Date	12-Jan-2006
Request for Reconsideration of Petition	09-Mar-2006	Due Date	

User ID: mc

Date Created: 23-Sep-2003

Last Update: 12-Jan-2006

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Joseph E. Schroeder

GROUP: 3749

SERIAL NO.: 10/677,443

EXAMINER:

FILED: October 2, 2003

DOCKET NO.: NOOT 8500U1

FOR: ONCE-THROUGH EVAPORATOR FOR A STEAM GENERATOR

St. Louis, Missouri
June 17, 2004

Mail Stop Amendment
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT
PURSUANT TO §1.97 AND § 1.98

Sir:

The information, patents and/or literature references listed on the attached Form PTO-1449, may be relevant to the examination of this application.

Pursuant to 37 CFR § 1.97(e), the undersigned attorney hereby certifies that to the best of his information and belief that the seven references cited on Form PTO 1449 were first cited in a communication from the United States Patent Office; that the communication pertains to International Patent Application PCT/US03/31174 which is the counterpart of U.S. Application 10/677,443; and that the U.S. Patent Office (ISA/US) dispatched the search report not more than three months ago and before the first action on the merits. ***Therefore, no fee is due.***

The last page of the International Search Report is likewise submitted herewith to show the degree of relevance accorded the individual references. Specifically, section C of the International Search Report identifies the category of relevance for each reference cited and claimed. The claims of the International application generally correspond to the original claims in the U.S. application.

The Commissioner is hereby authorized to charge any additional fees or credit overpayment under 37 CFR 1.16 and 1.17 which may be required by this paper to Deposit Account 162201. *Duplicate copies of this sheet are enclosed.*

Date: June 17, 2004

Respectfully submitted,



Edward A. Boeschstein
Registration No. 22,986
POLSTER, LIEDER, WOODRUFF
& LUCCHESI, L.C.
12412 Powerscourt Drive, Suite 200
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Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on June 17, 2004.


Edward A. Boeschstein, Reg. No. 22,986



FORM PTO-1449 U.S. DEPARTMENT OF COMMERCE, PATENT AND TRADEMARK OFFICE INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Use several sheets if necessary)	ATTY. DOCKET NO.: NOOT 8500U1	SERIAL NO.: 10/677,443
	APPLICANT: Joseph E. Schroeder	
	Filing Date: 10/02/2003	Group: 3749

U.S. PATENT DOCUMENTS

Examiner Initial	Document Number	Kind Code (click here)	Patent Issue Date OR US App. Pub. Date OR US Non-Published Application Filing Date	Name
	US 6 4 4 6 5 8 0		09/10/2002	Franke et al.
	US 5 6 6 2 0 7 0		09/02/1997	Kastner et al.
	US 4 9 8 7 8 6 2		01/29/1991	Wittchow et al.
	US 3 1 3 3 5 2 8		05/19/1964	Litwinoff
	US 6 5 3 0 4 2 1		03/11/2003	Filius et al.
	US 5 8 0 6 4 7 0		09/15/1998	Konishi et al.
	US 5 3 4 1 7 6 9		08/30/1994	Ueno et al.

FOREIGN PATENT DOCUMENTS

Examiner Initial	Document Number	Date	Country	Translation	
				Yes	No

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

EXAMINER	DATE CONSIDERED
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EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

(Form PTO-1449)

INTERNATIONAL SEARCH REPORT

International application No.

PCT/US03/31174

A. CLASSIFICATION OF SUBJECT MATTER

IPC(7) : F22B 15/00

US CL : 122/235.17, 367.3, 6A; 165/175, 184

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

U.S. : 122/1B, 6A, 235.14, 235.15, 235.17, 235.23, 367.1, 367.3, 406.4; 165/174, 175, 176, 179, 181, 182, 183, 184

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)

C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	US 6,446,580 A (FRANKE et al) 10 September 2002, Figs. 1-2.	1-4, 6-7, 8-10, 12-13, 14-18
X	US 5,662,070 A (KASTNER et al) 02 September 1997, Figs. 1-2.	14-18
X	US 4,987,862 A (WITTCHOW et al) 29 January 1991, Figs. 1-6.	1-4, 6-7, 8-10, 12-13, 14-18
X	US 3,133,528 A (LITWINOFF) 19 May 1964, Figs. 1-17.	1-4, 6-7, 8-10, 12-13, 14-18
A, P	US 6,530,421 A (FILIUS et al) 11 March 2003, Figs. 1-6.	1-18
A	US 5,806,470 A (KONISHI et al) 15 September 1998, Figs. 1-3.	1-18
A	US 5,341,769 A (UENO et al) 30 August 1994, Figs. 1-11.	1-18

☐ Further documents are listed in the continuation of Box C.

☐ See patent family annex.

* Special categories of cited documents:

"A" document defining the general state of the art which is not considered to be of particular relevance

"E" earlier application or patent published on or after the international filing date

"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)

"O" document referring to an oral disclosure, use, exhibition or other means

"P" document published prior to the international filing date but later than the priority date claimed

"T"

later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention

"X"

document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

"Y"

document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art

"&"

document member of the same patent family

Date of the actual completion of the international search

20 February 2004 (20.02.2004)

Date of mailing of the international search report

12 APR 2004

Name and mailing address of the ISA/US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
Facsimile No. (703)305-3230

Authorized officer

Jiping Lu

Telephone No. 703 308-1113